

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:06-CV-04592
)	
CITY OF PHILADELPHIA; and)	
PHILADELPHIA CITY COMMISSION,)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF UNITED STATES' MOTION FOR A TEMPORARY RESTRAINING
ORDER, OR IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION**

The United States hereby moves for a temporary restraining order, or in the alternative, a preliminary injunction, to prevent Defendants from continuing to violate the rights of minority voters under Sections 203 and 208 of the Voting Rights Act, as amended, during the upcoming November 7, 2006 general federal elections. The United States seeks expedited consideration of its motion to ensure relief can be granted in time for that election.

I. INTRODUCTION

The City of Philadelphia ("the City") has been obligated to provide bilingual assistance and election-related information to its limited English-proficient ("LEP") Puerto Rican citizens since 1965, when Congress passed Section 4(e) of the Voting Rights Act ("Section 4(e)"). The City was found to have violated that obligation in 1974 in Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974), where the Court permanently enjoined the City to translate all election materials into Spanish and to provide bilingual personnel at all polling places touching census tracts with 5 percent or more Puerto Rican population. In 1992, that protection was extended to all Spanish

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heritage citizens in Philadelphia under Section 203 of the Voting Rights Act ("Section 203"), and the City remains required to provide in Spanish all election materials and information that it provides in English to over 25,000 voting age citizens who need such assistance.

The Voting Rights Act also has long required, in Section 208, that all voters who need assistance in voting due to physical disability or inability to read and understand the English language, are entitled to receive necessary assistance, and to receive it from any person of their choice, other than their employer or officer of their union. In addition, and to protect these rights, the Act authorizes the appointment of federal observers to monitor polling places to protect the rights of voters who have suffered discrimination.

These are the guarantees of federal law. The experience of one voter illustrates the starkly different reality in Philadelphia:

1. ... I have lived in Philadelphia for about 30 years. I became a citizen in 1983. I have been registered to vote since October of 1983. I communicate in Spanish. I do not speak English. I have tried to learn English, but it has been very difficult.
2. I experienced a problem while voting in May 2006. I voted at the Incarnation School. I went to vote early in the morning, with my daughter, Manuelita Susana Alonzo, who speaks very little English. I did not see any materials posted in Spanish. I asked all the poll workers at the check in table if they spoke Spanish, but none of them did. I told them that I wanted to speak with someone who could tell me how to vote in Spanish. The poll workers were laughing at the fact that I could not speak English. My daughter told the poll worker in broken English that I needed help in Spanish. They could not help me in Spanish. I became very upset at being laughed at and being made fun of, that I started crying. I was frustrated that there was no one there to assist me and I walked out of the polling place.
3. As I walked out of the polling place, I saw a group of people standing outside. A woman from this group approached me and asked if I had a problem inside the polling place. She called out to a Spanish-speaking mailman who was passing in front of the polling place to interpret for her to understand the

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problem I had encountered inside the polling place. Once she found out what my problem was, she accompanied me into the polling place and told the poll workers that I wanted to vote. At this point, the poll workers gave me a ballot.

4. After I received my ballot, I could not understand how I was supposed to vote. I went into the booth by myself. I was determined that I was not going to let the poll workers make fun of me again! So, I just voted for whomever. I didn't even know who I had voted for at that point. I voted without understanding who, or what, I was voting for. I had no idea if I was voting for the Democratic, Republican, Socialist or Communist Party. I was so upset that I just wanted to vote, period, and leave. After I voted, I just left.

5. After that election a woman came to my house and said that someone should have been there to help me in Spanish. She spoke with my daughter and explained that she was going to make sure that what happened to me would not happen again.

6. In all of the elections I voted in, I have never seen a Spanish-speaking poll worker or materials in Spanish.

7. After this experience, I am now only going to vote in the presidential elections, because if local officials are not interested in helping me receive Spanish language assistance in order to vote correctly, then I feel that it is not necessary for me to vote for them. If there were Spanish-speaking poll workers in the polls, I would probably vote in other elections.

8. I am very happy to be an American and to live in this country. I pay attention to what goes on in this neighborhood and I know that I am not the only person who has struggled. Here the people do not complain, but they struggle. It is our right to vote.

Montijo, B. Decl., ¶¶1-8.

Such violations and the serious and irreparable harm they inflict are neither recent nor isolated in Philadelphia. The City ignores the Arroyo Court. It has no process for identifying where Spanish-speaking language assistance may be needed. The City has failed to train and supervise its poll workers so that Spanish-speaking and other citizens receive the necessary assistance and are able to choose an individual they trust to provide assistance. As demonstrated

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by the more than 50 declarations attached to the instant Motion, these failures have resulted in voters : (1) leaving their polling places without casting a ballot; (2) becoming confused while completing their ballot and failing accurately to record their preferred choices; (3) being subjected to mistreatment, including racial epithets; (4) having their votes stolen by faux assistants; (5) not being allowed to receive assistance from an assistant of their choice; and (6) forcing them to rely on translation by friends or family members who were themselves confused about the voting process, unable to communicate in English, and unable to obtain necessary information from poll workers.

This harm to Hispanic and other minority voters will continue to occur on November 7, 2006, unless this Court grants this temporary restraining order. Given the scope and widespread nature of the City's failure, the United States seeks a temporary restraining order, or in the alternative, a preliminary injunction, to ensure the City's compliance with Sections 203 and 208 of the Voting Rights Act for the November 7, 2006 general election. The United States appreciates the Court's expedited consideration of its motion, in light of the short period of time before the November 7, 2006 general election. The relief sought by the United States includes a minimal interim program to compel the City's compliance with Sections 203 and 208, and Court certification for federal observers pursuant to Section 3(a) of the Voting Rights Act, as amended, 42 U.S.C. § 1973a(a). The assignment of federal observers is critical given the City's longstanding failure to provide adequate bilingual language assistance on election day (notwithstanding an existing court order in Arroyo), the interference by poll workers with monitoring with the permission of City officials, and in light of the fact that Spanish-speaking voters have suffered and will continue to suffer hostility and mistreatment. Federal observers are

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the chosen tool of Congress to protect minority voters from such violations by recording any abuses and, we trust, deterring future violations of the Voting Rights Act.

II. BACKGROUND

This action, filed October 13, 2006, arises out of electoral practices and procedures in the City of Philadelphia, Pennsylvania that violate Sections 203 and 208 of the Voting Rights Act, as amended, 42 U.S.C. §§ 1973aa1-a and 1973aa-6.¹ Section 203 requires certain jurisdictions, including Philadelphia, to provide all “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” that are provided in English also to be provided in the covered language, here Spanish. The determination as to coverage is made by the Director of the Census using a statutory formula created by Congress. These determinations are effective upon publication in the Federal Register “and shall not be subject to review in any court.” See 42 U.S.C. § 1973aa-1a(b)(2)(A) & (b)(4).

Section 208, which applies to every electoral jurisdiction in the nation, provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 42 U.S.C. § 1973aa-6.

The City first became covered under Section 203 for the Spanish language in 1992, well after the Arroyo Order. See 57 Fed. Reg. 43,213. Philadelphia remains covered today. See 67 Fed. Reg. 48,871 (July 26, 2002). The United States contacted the City regarding its obligations

¹ On July 27, 2006, the President signed a law extending Section 203 of the Voting Rights Act until 2032. See Public Law 109-246, 120 Stat. 577, 581.

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under Section 203 in detailed letters dated September 21, 1992, and July, 26, 2002; and offered “best practices” for compliance in a letter dated August 31, 2004, including that “the jurisdiction should ascertain which polling places have such voters and the language skills of its poll officials to assure that the language need is being met in the polling place.” Kim, A. Decl. at ¶5, Ex. A1, A2, & A6.

In addition to its Section 203 obligations, the City has been required to provide bilingual assistance to Puerto Rican voters under Section 4(e) of the Voting Rights Act, and has been ordered to do so pursuant to a federal court order in Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974). The District Court permanently enjoined Philadelphia to provide, among other things, Spanish translations for all written election material provided in English and “a sufficient number of individuals who speak, read, write, and understand both Spanish and English . . . at all polling places and places of registration in the City of Philadelphia falling in whole or in part, in a census tract containing 5 percent or more persons of Puerto Rican Birth or extraction pursuant to the most recent census report reflecting such information.” Id. at 768.

This suit arises after clear notice to the City of its obligations, and after a persistent frustration by the City of efforts by the United States to obtain basic information concerning a program that, as it turns out, does not exist. The United States contacted the City on January 13, 2004, for information on the City’s bilingual program, and again on January 20, 2004, May 11, 2004, and December 27, 2004. Kim, A. Decl., ¶5, Ex. A3, A5, A7. Philadelphia offered a partial, inaccurate response on April 19, 2005, reporting that 210 poll officials signed in and were employed as interpreters for the November 2, 2004, general election, but only 114 of these people were actually interpreters. Kim, A. Decl., ¶6, Ex. A10. The United States noted a large

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number of duplicates—that is, poll workers listed as working at more than one precinct at the same time. *Id.*, Ex. A11. The City eventually provided the Department with an updated list that allegedly did not contain duplicate entries, on June 17, 2005. *Id.*, Ex. A12. The list still appears to contain some duplicates. Ely, D. Decl., ¶25.

On January 18, 2006, the Department reiterated its request for elements of the City program. Kim, A. Decl., ¶5, Ex. A9. Moreover, despite repeated requests before and after the May 16, 2006 election, it took seven weeks for the City to provide a voter registration list, and the United States still has not received a list of the bilingual poll officials and interpreters for the May 16, 2006, primary election. Kim, A. Decl., ¶6, Ex. A18.

On September 26, 2006, the United States formally advised the City that the instant action would be filed, described the City's violations in detail and offered to negotiate an interim agreement with the City to resolve these issues on a temporary basis before the November 7, 2006 general election. On October 13, 2006, following the failure of these negotiations, the United States filed its Complaint in the present action and, as the matter had become public, initiated the process of collecting the accompanying declarations.

III. STATEMENT OF FACTS

A. Demographic Data

According to the 2000 Census, Philadelphia had a total population of 1,517,550, which includes 128,928 (8.5%) residents of Hispanic origin, of whom 91,527 (71%) are of Puerto Rican descent. Ely, D. Decl., at ¶14. Many of these individuals were educated in Puerto Rico where the primary language of classroom instruction is Spanish. Philadelphia's citizen voting age population ("CVAP") is 1,071,785, including 70,980 (6.6%) citizens of Hispanic descent. Over

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36% of these citizens or 25,660 are considered to be LEP. Ely, D. Decl., at ¶15. Philadelphia's Hispanic population is centered in north Philadelphia, though there are sizeable Hispanic populations in southern and northeastern parts of the city. See id., Exs. B7, B9, B16.

Since 2000, the number of Hispanic and Spanish-speaking residents in the City has grown, even though the City's overall population has decreased significantly. According to the Census's 2005 American Community Survey, Philadelphia's total population decreased by 111,135 (7.9%) to 1,406,415. See Ely, D. Decl. at ¶16. However, the Hispanic community grew by an estimated 17,928 (13.9%) to a total of 146,856, or approximately 10 percent of Philadelphia's population. Id. Of Philadelphia's Hispanic population, the Census estimates that 97,689, approximately 67%, are Puerto Rican. Id. The Census also estimates the Hispanic voting age population to be 92,142, while 75,085, approximately 81% of the voting age Hispanics in Philadelphia, are citizens. Id. Among the City's Hispanic voting age population, 39,678 are Spanish speaking with limited English proficiency. Id.

B. Lack of a Bilingual Language Assistance Program

The City has no program to identify the need for, or the placement of, Spanish-speaking poll workers and interpreters on election day. The City does not make any substantive determination regarding an interpreter's ability to speak Spanish, and in fact pays persons to be interpreters who cannot speak Spanish. The consequences have been reported widely. See, e.g., Fitzgerald, Thomas, *Feelings run high at vote recount. Some witnesses allege harassment against write-in campaign*, PHILADELPHIA INQUIRER, May 20, 2006 (an "interpreter" hired for Ward 43, Division 17 was not fluent in Spanish: "When challenged, the faux translator said, 'Ma'am, we're in the United States and we speak English here.'") This interpreter, Damaris

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Martinez (mistakenly referred to as Sonia in a news article), was then sent to Ward 43, Division 11, but a party official barred her from entering the polling place because her paperwork did not authorize her to work as a translator at that division. Martinez, D. Decl., ¶¶7-9; Sheridan, C. Decl., ¶18, Ex. C6 at 53-56 (mistakenly referred to as Tamaris in transcript); see also Warner, Bob, *Both sides allege irregularities in 179th District race*, PHILADELPHIA DAILY NEWS, May 20, 2006.

Anibal Garcia witnessed an “interpreter” who could not speak Spanish at the Word Alive Worship Center (43-8). Garcia, A. Decl., ¶¶2, 5; see also Sheridan, C. Decl. ¶17, Ex. C6 at 47-48. Mr. Garcia attempted to engage the individual claiming to be a Spanish interpreter in Spanish conversation. Garcia, A. Decl., ¶5. The “interpreter’s” only response was “un poquito.” Id. This same “interpreter would not let the assigned interpreter, Luz Cordero, sit at the election table.” Id.

C. Failure to Provide Spanish-Speaking Poll Workers and Interpreters

Voters require assistance in Spanish even before they receive a ballot or attempt to operate voting equipment, to find their name in the poll books, to determine if they are in the correct polling place, to learn how to use the voting equipment, to learn how to use a provisional ballot, and to obtain answers to other voting-related questions.

The City has consistently failed to provide sufficient Spanish-speaking poll workers and interpreters for its elections. Based on information obtained by the 2000 Census, David R. Ely concluded that there are 361 divisions covered under Arroyo. Ely, D. Decl., ¶19. This means that, after accounting for the City’s consolidation of divisions, the City has 246 Arroyo-covered polling places. See id., ¶28, Exs. B21, B22. Additionally, 164 polling places have at least 100

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Spanish-surnamed voters. See id. Eleven polling places served at least 100 Spanish-surnamed voters but did not have a division covered under Arroyo. As a result, there are a total of 257 polling places that are covered under Arroyo, has over 100 Spanish-surnamed voters, or both.

Many of the polling places in these Hispanic divisions do not have bilingual poll workers or interpreters. In the November 2004 presidential election, the City of Philadelphia only assigned 137 poll workers identified as interpreters for the 361 Arroyo-covered divisions, Ely, D. Decl., ¶27, and only 104 of the 257 polling places identified by David Ely had at least one interpreter. See id., ¶28, Ex. B21. This failure is highlighted by the fact that at least 70 polling places with large numbers of Spanish-surnamed voters, such as the Villas Del Caribe polling place, which served 823 Spanish-surnamed voters, do not have any poll workers identified as an interpreter. Id. If one were to make the spurious assumption that every Spanish-surnamed poll worker spoke Spanish, the City provided a possibly bilingual poll worker to only 131 of the 257 polling places identified by David Ely. Id. For example, the polling place at Amici's Restaurant did not have even one possibly bilingual poll worker even though it served 630 Spanish-surnamed voters. See id.

The City's assignment of interpreters was even worse in 2005: of the 361 Arroyo-covered divisions, only 87 had a poll worker identified as an interpreter. See Ely, D. Decl., at ¶26. Indeed, only 74 polling places with at least 100 Spanish-surnamed voters or with at least one Arroyo division had at least one interpreter. See Ely, D. Decl., ¶28, Ex. B22. As a result, polling places such as the Stetson Middle School, which served 882 Spanish-surnamed voters in 2005, did not have an interpreter. Id. Again, if every Spanish-surnamed poll worker spoke Spanish, the City provided a possibly bilingual poll worker to only 113 of the 257 polling places

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with at least 100 Spanish surnamed voters or with at least one Arroyo division. Id. For example, the Word Alive Center, located at 8th and Luzerne streets, did not have a single possibly bilingual poll worker even though it served 804 Spanish-surnamed voters. Id.

The evidence further reflects that Philadelphia poll officials fail to reflect the communities they serve. In the November 2004 election, Spanish-surnamed poll workers and interpreters accounted only for 415 of the over 8,600 poll workers hired by the City—that is, Spanish-surnamed poll workers and interpreters only accounted for approximately four percent of the total amount of poll officials in the November 2004 election. Ely, D. Decl., ¶25. This total decreased in the November 2005 general election, with the City hiring only 362 Spanish-surnamed poll workers and interpreters. Id. These totals are significantly lower than the overall Hispanic population in Philadelphia, which accounts for approximately ten percent of the City’s citizen population. Id., ¶15-16.

D. Observation of Insufficient Spanish-Speaking Poll Workers and Interpreters.

For Philadelphia’s November 8, 2005, general election, the Disability Rights Section (“DRS”) of the Civil Rights Division of the Department of Justice sent personnel to over 100 polling places in Philadelphia to assess their accessibility to disabled voters. Of these polling places, 28 were located in divisions covered by Arroyo and 21 had more than 100 Spanish-surnames voters. See Ely, D. Decl., ¶28, Ex. B22; see also Frelich, A. Decl., ¶¶4-5; McNamee, V. Decl., ¶¶7-13; McCloskey, N. Decl., ¶¶7-13; Morgan, R. Decl., ¶4; Sadler, F. Decl., ¶5; Young, C. Decl., ¶¶5-7. As part of their efforts, DRS completed a three-page report regarding the number of interpreters, the existence of bilingual election material, and the assistance and treatment of LEP voters. DRS’s reports indicate that the City provided Spanish-speaking poll

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workers or interpreters in 14 of the 28 Arroyo-covered polling places and 13 of the 21 polling places with 100 or more Spanish-surnamed voters.²

Voting Section personnel discovered similar failures during the May 16, 2006 federal primary. Voting Section personnel monitored over 50 polling places covered under Arroyo or had 100 or more Spanish-surnamed voters.³ Under the polling places identified for coverage by David Ely, Ely, D. Decl., ¶28, Ex. B22, the City did not provide bilingual poll workers or interpreters at 27 of these polling places. Murray, J. Decl., ¶¶7-13; Bonilla, G. Decl., ¶¶7-11; McNamee, V. Decl., ¶¶7-9; Kim, G. Decl., ¶¶7-11; Ferrer, M. Decl., 7-9. Three of these polling places, including the Mars Baptist Church in Ward 37, which served more than 750 Spanish-surnamed voters. Ely, D. Decl., ¶¶24, 28, Exs. B15, B22.

Volunteers for the Committee of Seventy, an independent election monitoring group, witnessed a similar failure to provide bilingual interpreters during the May 2006 primary. Sheridan, C. Decl., ¶¶9-11, 13, 18, Ex. C7. As part of that monitoring effort, the Committee of Seventy's volunteers visited 107 polling places covered under either the Arroyo order or had more than 100 Spanish surnamed voters. Sheridan, C. Decl., ¶18, C7; Ely, D. Decl., ¶28, Ex. 22. For the first time, the Committee of Seventy focused on wards with large, substantial Hispanic populations. The Committee of Seventy's volunteers asked poll officials in 88 of these 107

² The November 2005 polling places covered by Arroyo and those with 100 or more Spanish surnamed voters are set forth in the Declaration provided by David Ely. Ely, D. Decl., ¶28, Ex. B22. The polling places that were observed without Spanish-speaking poll workers or interpreters are set forth in the Declarations provided by DRS personnel. See Frelich, A. Decl., ¶¶4-5; McNamee, V. Decl., ¶¶7-13; McCloskey, N. Decl., ¶¶7-13; Morgan, R. Decl., ¶4; Sadler, F. Decl., ¶5; Young, C. Decl., ¶¶5-7.

³ One of the polling places covered by Arroyo did not have 100 or more Spanish-surnamed voters.

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polling places whether they had bilingual interpreters. Sheridan, C. Decl. at ¶18, Ex. C7. Only approximately 65% of these polling places said that they had a bilingual poll worker. See id.; Ely, D. Decl., ¶ 28, Ex. B22.

The failure to assign translators has created significant problems in some polling places. The Election Judge at the PAL Center (23-22, 23), admitted that there were “monstrous problems” during the last general election where the voters were “illiterate and couldn’t read” and where the polling place did not have any capable assistants. Bonilla, G. Decl., ¶10. Another Election Judge at Incarnation School (42-13, 17, 20, 21) told Department personnel that “we’d be helpless with an LEP person - I’d ask around [for assistance].” McCloskey, N. Decl., ¶11.

E. Voters Have Been Prejudiced by the Lack of Assistance.

The failure to assign Spanish-speaking interpreters and poll workers has seriously prejudiced many Hispanic voters. Many citizens can testify that they wanted and needed bilingual assistance at the polls but did not receive it because the City failed to provide bilingual poll workers at their polling places, or have seen other citizens suffer such problems.

1. Voters Turned Away or Casting An Ineffective Ballot

The absence of bilingual workers in the polling places causes some Spanish-speaking voters to leave in confusion, unsure whether they actually voted for the candidates they preferred. That certainly happened to Ms. Montijo, cited above, who was humiliated and laughed at by Philadelphia poll workers because of her limited ability to speak English, and who was not able to cast an effective ballot. Montijo, B. Decl., ¶2-4. Nivia Rosario, a Voter Registration Coordinator of the Puerto Rican Federal Affairs Administration (“PRFAA”), has observed numerous Spanish-speaking voters visibly frustrated because of the lack of bilingual poll workers

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because they could not communicate with the poll workers concerning affidavit ballots or finding their names on poll lists. Rosario, N. Decl., ¶2. She personally saw voters leave without voting during the 2003 mayoral election, because they could not understand poll workers who tried to explain the right to vote by affidavit in English. Id.

Elida Delgado had such problems in the May 2006 primary when she went to vote at the Word Alive Worship Center. Delgado, E. Decl., ¶2. She did not see any Spanish-speaking poll workers or election-related information in Spanish. Id. The English-speaking poll workers talked quickly and pressured her into voting quickly, and Ms. Delgado did not understand. Id. As Ms. Delgado stated, “I wanted to vote for my candidate, but I could not find his name on the ballot. I handed in my ballot without knowing who I voted for.” Id., ¶4. Ms. Delgado’s son, Javier Ortiz, who does not read or write English, witnessed his mother’s experience. Ortiz, J. Decl., ¶¶1-3. Mr. Ortiz also had trouble voting and did not understand how to mark the ballot. Id., ¶3. There were no poll workers to help Mr. Ortiz and his mother. Id. They “were both pretty lost.” Id.

Hector Gonzalez is another voter who needed, but did not receive, Spanish language assistance during the May 2006 primary. Gonzalez, H. Decl., ¶1-2. Mr. Gonzalez voted at the recreation center located at 8th and Diamond Streets. Id., ¶2. On election day, he did not see or hear any poll workers who spoke Spanish. Id., ¶3. Mr. Gonzalez does not understand the voting process; however, because his polling place does not have Spanish-speaking poll workers, he simply does his “best.” Id., ¶4. Mr. Gonzalez wishes that his polling place had Spanish-speaking poll workers to help him vote. Id., ¶5.

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Carmen Jimenez, who has voted in every election for the last twenty years, has seen a Spanish speaking poll worker in only one election, more than 10 years ago. Jimenez, C. Decl., ¶¶1, 4. When she went to her polling place, the Incarnation School at Ward 42, to vote in the May 2005 election, she was told to wait fifteen minutes for Spanish language assistance. Id. However, a Spanish speaking poll worker never showed up. Id. Ultimately, she went ahead and voted on her own without any assistance, but felt very uncomfortable and confused. Id., ¶5. She has felt this way every time she has voted. Id.

Carmen Maria Lebron has lived in the same division for 28 years and votes at the Tabor United Church of Christ. Lebron, C. Decl., ¶¶1-2. She is a committee member and knows that many of the numerous Spanish-speaking voters in Ward 61 are frustrated by lack of Spanish language assistance in their polling places. Id., 5-6. Some of these voters have stopped voting because there is no Spanish-language assistance. Id.

Gladys Rodriguez De Matos was born and raised in Philadelphia and has voted in every election since the age of 18. De Matos, G. Decl., ¶ 3. She has witnessed a number of elderly Spanish-speaking voters who after wandering the polling place in frustration looking for the correct division to vote, would leave the polls frustrated that none of the poll workers assisted them. Id. Ms. De Matos has to translate for her parents, who do not understand English. Id. at 4. She has witnessed poll workers incorrectly checking in Hispanic voters from the same family. Id. at 5. In 2006, Ms. De Matos witnessed a Spanish-speaking voter who stood in the middle of the gymnasium, not knowing where to go check in, and unable to communicate with poll workers. The Hispanic voter appeared upset and confused by the rude treatment by the poll workers. Id.

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Connie Quinones witnessed another LEP voter having difficulty voting during the May 2006 primary at the Taylor School. Quinones, C. Decl., ¶6. The voter was told by a poll worker that the voting machine was broken. The voter was not offered an alternative method of voting and left without casting a ballot. Id., ¶6. Dinorah Diaz, a poll watcher, also witnessed a Spanish speaking voter at the Taylor School polling place being told that the voting machine was broken. The voter left without casting a ballot after he was not offered an alternate method of voting. Diaz, D. Decl., ¶6.

Luz Cordero, a poll watcher at the Word Alive Worship Center, witnessed a Spanish speaking voter come out of the polling place, visibly upset, exclaiming that she was not able to understand the procedures for voting with a paper ballot, that she did not receive assistance from the poll workers, that she was given a ballot and did not even know for whom she had voted. Cordero, L. Decl. ¶ 10-12, See also, Rodriguez, G. Decl., ¶¶ 4, 2; Rodriguez, J. Decl., ¶¶ 3-4; Cruz, M. Decl., ¶2; Maldonado, M. Decl., ¶3; Rosario, N. Decl., ¶¶2, 8.

2. Interpreters Not Permitted in the Polling Place or to Interpret

Even when the City has assigned an interpreter who is in fact bilingual to a polling place, some polling officials have refused even to allow the interpreter into the polling place. Damaris Martinez was hired and received a certificate to serve as an interpreter at the Taylor School for the May 2006 election. Martinez, D. Decl., ¶4; see also Johnson, G. Decl., ¶¶3,4. Ms. Martinez arrived at her designated polling place on election day; however, the Election Judge said that she did not need an interpreter because the Election Judge was fluent in Spanish. Martinez, D. Decl., ¶7. The Election Judge then contacted a man by the name of Tom Logan, who confronted Ms. Martinez, grabbed her certificate, and told her to leave. Id.; Johnson, G. Decl., ¶¶3,4. In

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response, Ms. Martinez told Mr. Logan that “he would have to take me out like they took Rosa Parks off of the bus.” Mr. Logan allowed Ms. Martinez to stay at the table, but would not let her sign the payroll sheet. Martinez, D. Decl., ¶9; see also Sheridan, C. Decl., ¶17, ex. C6 at 53-56; Fitzgerald, Thomas, *Feelings run high at vote recount*, PHILADELPHIA INQUIRER, May 20, 2006; Warner, Bob, *Both sides allege irregularities in 179th District race*, PHILADELPHIA DAILY NEWS, May 20, 2006. Jahara Torres was treated similarly at the Taylor School polling place during the May 2006 primary. See Sheridan, C. Decl., ¶17, Ex. C6 at 67-70. Luz Perez, an election judge at the McClure School, witnessed another interpreter not being allowed to translate. Id. at 70-74.

For the 2002 gubernatorial election, Nahir Rivera was hired to serve as an interpreter for 2913 Frankford Street, between Monmouth and Cambria. Rivera, N. Decl., ¶4. The Election Judge directed Ms. Rivera to leave the polling place and instead to urge residents to vote. Rivera, N. Decl., ¶¶ 4, 5.

3. Ineffective Assistance by Poll Watchers and Electioneers.

At some polling places where the City has failed to provide Spanish-speaking poll workers or interpreters, Spanish speaking voters have had to rely on poll watchers or electioneers to provide assistance. The results have been woefully inadequate. During the May 2006 primary, a voter had to rely on poll watchers outside of the polling place for Ward 18, Division 8, which was located in a vacant restaurant at 405 Norris Street. Murray, J. Decl., ¶8. The polling place did not have an assigned Spanish-speaking interpreter. Id. Although two bilingual poll watchers attempted to explain the write-in ballot to the LEP voter, the voter did not understand their explanation and left the polling place in frustration. Id., ¶9.

Emma Perez witnessed a similar event approximately six years ago. Perez, E. Decl., ¶3.

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Ms. Perez, who speaks English and Spanish, was at a polling place located at 5th and Cayuga Streets. She saw two elderly LEP Spanish-speaking voters ask a poll worker in broken English how to vote. Id., ¶5. The poll worker, in broken Spanish, replied, “pull the lever on the machine for a straight vote.” Id. The poll worker approached Ms. Perez and confronted the poll worker regarding her actions. Id. Another poll worker, who was working behind the check-in table, told the poll worker to go outside and hand out flyers instead of working inside of the polling place. Id., ¶6. The elderly LEP voters appeared to be “frightened” by the scene and left the polling place without voting. Id., ¶7. Ms. Perez was disgusted by the fact that a poll worker would attempt to unduly influence LEP voters and has not voted since that election. Id., ¶8.

4. Friends and Family Members Who Attempt to Help Spanish-Speaking Voters in the Absence of Assistance from the City Are Often Confused About the Process Themselves.

Many Spanish-speaking voters must wait for friends and family to be available to go with them to the polls to translate, because they know from past experience that bilingual assistance from the City will not be available. They do not have the option of going independently to the polls. In some cases, the assistors speak limited English themselves, and/or do not fully understand the information they are attempting to explain.

For example, Jailyn Rodriguez is a 12 year old who attends St. Veronica’s Elementary School. Rodriguez, J. Decl., ¶1. Because Jailyn speaks English and Spanish, she has helped her grandmother, Gladys Rodriguez, to vote because her grandmother only understands a little English. Id., ¶2; Rodriguez, G. Decl., ¶1. Ms. Rodriguez’s polling place, the Taylor School (43-11,12, 17, 18), did not have Spanish-speaking poll workers during the May 2006 primary election. Rodriguez, G. Decl., ¶1. During that election, Jailyn went into the polling booth with

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her grandmother, but was confused by the voting machine. Rodriguez, J. Decl., ¶3. Jailyne asked the poll worker for help with the voting machine, but the explanation was too complicated for her to understand. *Id.* Thus, Gladys Rodriguez had to vote by herself without a clear explanation of how the machine worked. Rodriguez, G. Decl., ¶ 2. She also has difficulty understanding matters related to politics, which are very complicated, unless they are explained in Spanish. *Id.*, ¶3. Ms. Rodriguez knows of other LEP Spanish-speaking citizens who have need help at the Taylor School polling place, but have not received that assistance. *Id.*, ¶4. Javier Ortiz and Elida Delgado, discussed above, faced a similar barrier. Ortiz, J. Decl., ¶¶3-4; Delgado, E. Decl., ¶¶3-4.

F. Undue Influence and Stolen Votes

On some occasions, partisan poll officials, poll watchers, and candidates are in a position to exert undue influence over a voter's choice of candidates or mis-mark the ballots of voters entitled to the protections of Section 203. When Myrna Cruz, a native Puerto Rican and Spanish speaking citizen, attempted to vote in the last mayoral election [in 2003], a poll worker would not let her use her assistor of choice and then entered the voting booth to assist her. Cruz, M. Decl., ¶3. Ms. Cruz stated, "I told the poll worker that I wanted to vote for Katz. However, the poll worker made me vote for John Street, whom I didn't want to vote for. He kept insisting that I mark the ballot for John Street and so I did." *Id.*, ¶4. Ms. Cruz noted that the same situation happened to her sister, Doris Cruz, and several other Hispanic voters with whom she spoke who were also "fooled into voting for a candidate that they didn't want to vote for." *Id.*, ¶5.

Ariana Vasquez, now age 16, accompanied her mother to the polls at the Fairhill School in 2003, but when her mother asked for her daughter's assistance, poll workers told them that she

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was too young to assist, and that a poll worker would provide the assistance. Vasquez, A. Decl. ¶ 1-3. The poll worker “assisted,” and the mother emerged from the voting booth upset, stating that the poll worker did not let her choose for whom she would vote. *Id.*, ¶3. The mother, Maria Cruz, confirms the mis-marking of her ballot in 2003 and makes clear that such abuse is recurring: In the 2004 and 2005 elections as well as 2003, poll workers attempted to direct Ms. Cruz, who relies on the Spanish language in voting, to vote for certain candidates in an intimidating manner. Cruz, M. Decl., ¶¶ 1-2, 4-5. All of these poll workers at the Fairhill School polling place spoke only English. In 2004, a male poll worker entered the voting booth with her and told her which levers to pull. Ms. Cruz became angry and told him, in Spanish, that she would vote for who she wanted to vote for, not who he told her to vote for. She then left without voting. Cruz, M. Decl., ¶ 4.

Two completed Committee of Seventy Voter Satisfaction surveys from John Doe voters allege improper electioneering. One John Doe voter at the Hunter School (19-11) complained to a Committee of Seventy volunteer about an altercation involving a committee member’s attempt to influence her vote. Sheridan, C. Decl, ¶16, Ex. C3. The volunteer wrote, “The woman was elderly and was asked to vote for a committee member with a stamp. They made her sign an affidavit though she wasn’t handicapped or illiterate. A watcher went behind the booth and the machine inspector did too.” Another John Doe voter at this same polling place also complained of a committee member exercising undue influence on a voter. “He was told to use a stamp to vote for a committee member. He didn’t need help voting but was told to sign an affidavit so a watcher could help him stamp the ballot. There was fighting and he felt very unsafe. He thought he would get beat up.” *Id.*, Ex. C4.

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G. The City Has Been Made Aware of the Need for Bilingual Assistance and Has Not Provided Such Assistance

Beyond the formal notifications from the Department of Justice and the permanent injunction in Arroyo, various community groups also have met with the City to discuss their concerns regarding the availability of Spanish language assistance. Maria Quiñones, Regional Director of PRFAA, has identified the need for more Spanish-speaking poll workers in Philadelphia's polling places. Quiñones, M. Decl., ¶¶10-11. Ms. Quiñones has notified the City regarding issues surrounding Spanish-speaking LEP voters and assistor of choice issues. Id. Other community organizations have made similar requests to Philadelphia regarding its bilingual assistance program. Sheridan, C. Decl., ¶8.

The records of the Philadelphia District Attorney's ("DA's") Office include complaints received on election day regarding the treatment of voters who rely on Spanish. The DA's Office has a hotline for election day complaints and logs each complaint in an incident report. Incident reports from the May 2005 and 2006 primary elections and November 2004 and 2005 general election show several instances where voters complained about the lack of Spanish-speaking interpreters, hostility at the polling place, and instances of undue influence. Berson, P. Decl., ¶3, Ex. D1.

H. Spanish-Speaking Voters Have Faced Rudeness, Hostility, and Indifference from Poll Workers on Election Day.

Spanish-speaking voters in Philadelphia not only must contend with a lack of assistance at the polls, but also must face hostility, rudeness, or indifference. During the May 2006 primary, several Hispanic voters, interpreters and poll watchers heard or were subject to derogatory and demeaning comments.

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Anibal Garcia heard a committee member, who was sitting inside the polling place at the Word Alive Worship Center, say “We don’t want Goya people here anymore.” Garcia, A. Decl., ¶9; see also Quinones, C. Decl., ¶9; Diaz, D. Decl., ¶7; Sheridan, C. Decl., ¶14, Ex. C6 at 48. Carmen Jimenez, an LEP voter at the Incarnation School, also has been insulted by poll workers at the polling place. She has been called “stupid”, in English, and has been told, “you don’t know what you are doing.” Jimenez, C. Decl., ¶7. She has also heard similar rude comments made to other Hispanic voters. Id. Rosa Nixon also has been the subjected of ethnically insensitive comments at Wedge Building polling place 3600 block of N. Broad Street. Nixon, R. Decl., ¶6.

During the May 2006 primary, Department personnel witnessed open hostility by a poll worker who said Hispanics should learn to speak English. The poll worker angrily questioned how any poll worker could tell if a translator was correctly translating election information to a Hispanic voter, if the poll worker did not speak or understand English. Murray, J. Decl., at ¶10. Indifference and dismissiveness to voters’ needs was expressed by poll workers during the May 2006 primary. See Kim, G. Decl., ¶8 (“Hispanics and Orientals bring their kids in to help them.”); McCloskey, N. Decl., ¶11 (Election Judge indicating that interpreter was not necessary for the primary because “they [Hispanic LEP voters] only come around for presidential elections.”). Ms. Maldonado, who needed assistance in voting on the new “computer” machines, experienced such indifference and neglect from poll workers. Maldonado, M. Decl., ¶3. Ms. Maldonado became confused in the voting booth and requested help from the poll workers, but none of the poll workers came over to assist. Instead, one poll worker told her, “just press one of the buttons.” Id. Ms. Maldonado felt lost, unsure if she had voted the way she wanted to vote,

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and disappointed that she was unable to get the assistance she needed. Id.

Ms. Gladys Rodriguez De Matos was outraged by such an experience. De Matos, G., Decl. ¶¶3, 4. While assisting her father, Ms. De Matos experienced an attitude from the poll workers that made her and her father feel unwelcome in the polling place. Id. She also witnessed a number of elderly Spanish-speaking voters walk to different tables trying to find themselves on the voting list and where they should vote. Id. None of the poll workers spoke Spanish and could not understand the Hispanic voters. Frustrated, the elderly Hispanic voters left the polling site without voting. Id.

Some poll workers tried to justify their open hostility to providing Spanish language assistance. When asked whether the polling place had bilingual assistance available, one poll worker at Fire Co.#64 (35-9) said, “ they [the Hispanics] are taking over” and “we might be okay today but what about tomorrow.” Kim, G. Decl, ¶7. Another poll worker noted that LEP voters would not have problems voting if they learned English. Id.

Under the circumstances of elections in Philadelphia, it is perhaps not surprising that poll workers may be unused to and resist official scrutiny. A number of poll workers, for example, showed open hostility toward Department of Justice personnel. In at least three polling places (Residence at 3110 N. 7th Street, Residence at 939 W. Silver Street, and Mars Baptist Church), Election Judges refused to allow Department personnel to monitor the election, even though the Department personnel had a written invitation from City Attorney Romulo L. Diaz. Ferrer, M. Decl., ¶¶7, 9-10. The poll workers would not answer any questions but insisted on the departure of Department personnel. Id.

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I. Failure to Hire Enough Bilingual Workers Discourages Spanish Speakers from Voting.

Because of the City's failure to hire bilingual workers, Spanish-speaking voters have difficult and even miserable experiences attempting to cast a ballot at the polls. Without bilingual translators to assist in the polling places, LEP voters are forced to seek help from small children, friends, poll watchers, and even other voters. Kim, G. Decl., ¶¶8-10. Many become discouraged about voting in the future. See, e.g., Cruz, D. Decl., ¶6 (saying that she felt disillusioned by not understanding whether she was casting her vote correctly); Cruz, M. Decl., ¶7 (she felt fooled into voting for a candidate that she did not support; if she knew that she was going to be fooled, she "would never have gone to vote"); Cordero, L. Decl., ¶13 (did not feel comfortable or welcome at the polling place (43-7)).

Emma Perez observed two elderly Hispanic voters having their votes directed by poll workers. When the two voters asked, in broken English, for assistance in using the voting machine, the poll workers instead directed their votes by telling them to just pull the lever on the machine for a straight vote. Perez, E. Decl., ¶5. When the poll workers attempted to do the same with Emma, she instead said loudly, "Don't you dare tell me who to vote for. It is my right to vote for whoever. What you just did is illegal." Id. At this point, the two Hispanic voters left the polling place without voting and appeared to be frightened. Id., ¶7. When Emma told a poll worker that she should report this, the poll worker told her that this would not happen again. Id. Emma, however, was disgusted to see what had happened to the other Hispanic voters and has not voted since. She has lost faith in the voting process and feels that her vote does not count for anything. She is angry because the two elderly Hispanic voters were taken advantage of simply

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because they did not know English well. Id., ¶8.

Carmen Maria Lebron, a committee member in Ward 61, has engaged many of her Hispanic neighbors through her get out the vote activities, and many of her Spanish-speaking neighbors told her they do not bother to vote because there is no one at the polling place who can provide assistance. Lebron, C. Decl., ¶5. They are frustrated by the lack of information regarding elections at the polling place and by the absence of bilingual poll workers. Id. She has also encountered Hispanics in other wards who are frustrated by the lack of Spanish-language assistance. For example, an elderly, limited-English proficient woman who is a parishioner at Incarnation Roman Catholic Church has stopped voting because there is no one to provide assistance in Spanish at her polling place. Id., ¶6.

J. Inadequate Spanish Language Materials: “echando su balota.”

Given the lack of bilingual poll officials, the only assistance available to some LEP voters is the election-related information posted in the polling place.⁴ Polling officials, however, have not consistently posted election-related materials in Spanish. Even where poll officials posted Spanish-language election information, Department personnel observed hostility toward the need to provide such information. Grace, K. Decl., ¶7. Finally, the translation of this Spanish language election material, including information on the website, has been inaccurate. Bonilla, G. Decl., ¶14.

Many of Philadelphia’s Spanish-language posters are mistranslated. Almost all of the posters have grammatical errors and typos, and in some instances the mistranslation is a

⁴ Even where signs are posted in Spanish, the needs of LEP Hispanic voters are not fully met. For example, signs alone would not help the 13% of the voting age citizen LEP Hispanic voters who are illiterate. See Ely, D. Decl., ¶ 15, Ex. B2.

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“Spanish-ization” of an English word, such as the word for “ballot.” Bonilla, G. Decl., ¶13. This can lead to a serious error. The sample ballot for the May 2006 primary, includes information on how to cast a ballot: the Spanish language version, “echando su balota,” however, tells LEP voters how to “throw away” their ballots. *Id.* The City Commission’s website contains similar errors, with some “translated” material is pidgin Spanish. For example, on the page devoted to Voter Registration information, there is a section entitled, “Qualifications of Voters.” The Spanish-language version translates the section heading as “Cualificanes de los Votantes,” even though “cualificanes” is not a Spanish word. The proper translation is “Requisitos para votar.” The website also tells voters how to “echando su balota.”⁵ Bonilla, G. Decl., ¶14.

Field Reports from the Committee of Seventy show that the problem of actually posting Spanish-language election information in voting places exists throughout the City. Of the 199 polling places which posted election information, Committee of Seventy volunteers recorded that 31, or approximately 15 percent, did not post the same information in its Spanish form. Sheridan, C. Decl., ¶¶13, 14. This is roughly the same percentage of polling places posting Spanish-language election information as found by Department personnel. Murray, J. Decl., ¶¶7-8, 10-13; Bonilla, G. Decl., ¶¶8-10; McNamee, V. Decl., ¶¶7-12; Kim, G. Decl., ¶¶7-11. The absence of materials is reflected in the comments of poll officials responsible for posting them, as during the May 16, 2006, primary election, poll officials at Fire Engine Co. #64 (35-9, 12) questioned the need for Spanish-language election information, by such comments as “They

⁵ See <http://www.phillyelection.com/spanweb.htm>.

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are taking over” and “We might be okay today, but what about tomorrow?”⁶ Kim, G. Decl., ¶

K. Poll Workers Have Interfered With the Right of Voters to Receive Necessary Assistance From the Persons of Their Choice.

Poll workers have blocked limited English proficient voters from getting help from their family and friends or someone of their own choosing. For example, a English-speaking poll worker prevented a voter from getting help in Spanish from her teenage daughter. Cruz, M. Decl., ¶3; Vasquez, A. Decl., ¶2-5. Maria Cruz, a limited English proficient Spanish-speaking voter was not allowed to bring her daughter into the booth to translate the ballot in 2003 and 2005. *Id.* Anthony Medina was approached by 10-15 Spanish-speaking voters at the 18th division of the 19th ward who sought his help in voting, but was blocked by poll workers who stated that they would provide the assistance. Medina, A. Decl., ¶5-6.

Jenny Du Nguyen, a limited English proficient Vietnamese-speaking voter was not allowed to receive help from her Uncle in the booth. Nguyen, J. Decl., ¶4. She could not understand the English-speaking poll worker’s instructions on how to use the machine and asked her Uncle for help. Nguyen, J. Decl., ¶3. The poll worker told her, “only one person in a booth, not two.” Ms. Nguyen ended up voting by herself and did understand what she was voting on without the help of a translator. Nguyen, J. Decl., ¶6.

Myrna Cruz voted for the first time in the [2003] last mayoral election at a polling place at 5th and Huntington. Cruz, M. Decl., ¶2. When she arrived at the polling place, she advised the poll workers that she wanted a friend to accompany her to the voting booth, to help her. *Id.*,

⁶ See also Bonilla, G. Decl., at ¶ 9 (at polling place (62-21, 23, 24), Department personnel noted that there were no Spanish language materials posted; the Election Judge admitted that “the Hispanic stuff in there [an envelope out of the way] if they need it.”).

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¶3; see also Rosario, N. Decl., ¶3 (witnessed Ms. Cruz's treatment on election day). A poll worker advised her that "[she] is not with us so she can't go in there with you." Cruz, M. Decl., ¶3. The poll worker told her that only an official poll worker was allowed to help Ms. Cruz. Cruz, M. Decl., ¶3. As noted above, that poll worker then mis-marked Ms. Cruz's ballot. Cruz, M. Decl., ¶4. Nivia Rosario was prevented from assisting Spanish-speaking, limited English proficient voters, at the Franklin School (Rising Sun and Cheltenham Avenues). Rosario, N. Decl., ¶4. At this site, an elderly white poll worker stopped Ms. Rosario from accompanying an elderly couple with limited English proficiency, into the polling place, and told her that only poll workers could provide assistance. Rosario, N. Decl., ¶4. Only when Nivia Rosario asked the poll worker if any Spanish speaking poll workers were available (and were not), was she allowed to assist the voters. Id. Maria Dorvil witnessed a violation of Section 208 at the Incarnation School: an elderly woman who spoke only Spanish and who used a walker entered the polling place with a bilingual young man who told poll workers in English that he needed to assist her. Dorvil, M. Decl., ¶¶2-3. Ms. Dorvil who herself has limited English proficiency, was then afraid to ask for assistance and lacked confidence in how she cast her own vote, especially as there were no Spanish instructions posted. Id. ¶4.

V. LEGAL DISCUSSION

The standard for determining whether a temporary restraining order should be granted is similar to the standard for a preliminary injunction. United States v. Metropolitan Dade County, 815 F. Supp. 1475, 1477 (S.D. Fla. 1993) (granting in part a temporary restraining order sought by the United States under Section 203 only three days before an election). The appropriateness of a preliminary injunction is dependent upon consideration of four factors: (1) whether the

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moving party has a likelihood of success on the merits; (2) whether there is potential for irreparable harm if the injunction is denied; (3) the balance of relevant impositions on all parties; and (4) whether injunctive relief is in the public interest. Opticians Ass'n of Am. v. Indep. Opticians of Am., 399 F.3d 89, 95 (3rd Cir. 1990). “[L]ikelihood of success is the sine qua non of preliminary injunctive relief.” McGuire v. Reilly, 260 F.3d 36, 51 (1st Cir. 2001). The United States is authorized by statute to seek preliminary relief for Voting Rights Act violations. See 42 U.S.C. §§ 1973j(d) & 1973aa-2. A preliminary injunction is justified in this case because all four prongs of the analysis weigh in favor of injunctive relief.

A. The United States Is Likely to Succeed on the Merits of the Action

1. Section 203 of the Voting Rights Act

The United States is overwhelmingly likely to succeed on the merits of its claim under Section 203 of the Voting Rights Act. 42 U.S.C. § 1973aa-1a. Section 203 requires the City to provide all written and oral voting information and instructions that are available in English in Spanish as well, and the City has simply and clearly failed to do so.

Section 203 does not require the United States to show intentional discrimination, but rather requires that any voting information and assistance provided in English shall also be provided in the “language of the applicable minority group.” See 42 U.S.C. § 1973aa-1a. “Good faith” efforts that provide only limited minority language assistance to a fraction of the voters is not a defense to a claim under Section 203. See Chinese for Affirmative Action v. Leguennec, 580 F.2d 1006, 1009 (9th Cir. 1978) (rejecting jurisdiction’s defense of “good faith” efforts to comply with Section 203). Nor are belated and incomplete efforts to increase bilingual assistance begun after the commencement of litigation sufficient to prevent the issuance of a

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preliminary injunction. See PROPA v. Kusper, 350 F. Supp. 606, 611 (N.D. Ill. 1972) (“The defendants’ announcement of an intention originating after the commencement of the suit to do what the requested preliminary injunction would require is not a ground for denial of the injunction.”); see also Feliciano v. Barcelo, 497 F. Supp. 14, 19 (D. P.R. 1979) (“The Court cannot, in view of the evidence, and the fact that half-hearted attempts to correct anything have only been made at the eleventh hour, . . . stay its hand or defer to the local authorities.”).

The Attorney General has issued Language Minority Guidelines to assist jurisdictions in complying with Section 203. See 28 C.F.R. pt 55. Copies of these guidelines were included in the September 1992 and July 2002 letters to the City. See Kim, A. Decl., Ex. A1, A2. The Guidelines provide that “[i]n evaluating the provision of [oral] assistance, the Attorney General will consider such facts as the number of a precinct’s registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his or her choice. The basic standard is effectiveness.” See 28 C.F.R. § 55.20.

Here, there should be no doubt that the City has been and continues to be in violation of Section 203 of the Voting Rights Act. The City is in violation of an existing federal court order to provide Spanish language assistance at certain polling places. The City has no program or system to identify sites where Spanish language assistance is needed or whether its “interpreters” actually can interpret. It has no system for ensuring that interpreters who can interpret are allowed to enter the polls and perform the tasks for which they have been hired. This lack of any system or minimal control produces shockingly inadequate results in the availability and quality of assistance provided to its citizens who need assistance in order to vote. The City has

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consistently failed to provide enough Spanish-speaking interpreters or poll workers for those polling places that are covered under Arroyo, or at other sites with substantial numbers of Hispanic voters from areas other than Puerto Rico who predictably will need Spanish language assistance. As established by the testimony of Mr. Ely, the City has only provided Spanish-surnamed poll workers and poll workers identified as interpreters at approximately one-third of these polling places in the November 2004 and 2005 general elections. See Ely, D. Decl., ¶ 28, Exs. B21, B22.

The City's failure is particularly egregious given its longstanding obligations under Arroyo. As that District Court made clear in Arroyo, Philadelphia was permanently enjoined to provide, among other things, Spanish translations for all written election material provided in English and "a sufficient number of individuals who speak, read, write, and understand both Spanish and English . . . at all polling places and places of registration in the City of Philadelphia falling in whole or in part, in a census tract containing 5 percent or more persons of Puerto Rican Birth or extraction pursuant to the most recent census report reflecting such information." Arroyo, 372 F. Supp. at 768. It clearly is not complying with this Court order and is not complying with the requirements of Section 203.

The City's violations fall heavily on its citizens who rely on the Spanish language for voting. Voters needing assistance have not received it, and have left the polling place without casting a ballot at all, or left the polling place unsure whether they cast their ballot, or suffered pressure to mark their ballots contrary to their own wishes. The City has failed to post Spanish language materials in a consistent manner in its polling sites, amid the open hostility of some poll workers to posting such information in Spanish. The City's translations and its treatment of

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Hispanic voters too often can be summed up in the phrase, “echando su balota”. As Miriam Maldonado declared, “I pressed a button, but I am not sure what it was for. In that moment, I felt lost. I’m still not sure who I voted for.”

The City has long been aware of its failure to provide adequate bilingual assistance to Spanish-speaking voters, from its citizens, from the Department of Justice, and even from a United States District Court. The City nonetheless has continued its haphazard non-approach to its federal law obligations, and long failed to provide - and continues to fail to provide - information to the United States. Such a fundamentally flawed process justifies the United States’ request for injunctive relief prior to the November 2006 election.

2. Section 208 of the Voting Rights Act

Section 208 provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 42 U.S.C. § 1973aa-6. “When voters are denied the right to bring their assistor of choice into the voting booth, they feel uncomfortable with the process, do not understand the ballot, and cannot cast a meaningful vote.” Berks County, 250 F. Supp. at 538.

Especially in light of the absence of City-provided bilingual assistance at most polling places, some citizens of Philadelphia who rely on the Spanish language for voting seek to bring friends or family members to assist them at the polls. That is their right under the Voting Rights Act. Time and again, voters are blocked in their exercise of this right, at times with open hostility. The various reasons expressed by poll workers - only poll workers can assist, minors cannot assist, only one in a booth - illustrate the lack of training and self-scrutiny of elections by

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the City. Too often the City, through the inadequate and, indeed, illegal staffs of monolingual poll workers it employs, actually prevents the voters from getting the help they need and to which they are entitled. Such conduct is a clear violation of the express terms of Section 208.

B. Voters Will Be Irreparably Harmed Absent Entry of a Preliminary Injunction

“Federal courts have recognized that the holding of an upcoming election in a manner that will violate the Voting Rights Act constitutes irreparable harm to voters.” See, e.g., Berks County, 250 F. Supp. 2d at 540 (granting preliminary injunction to require bilingual elections in Spanish); Metropolitan Dade Co., 815 F. Supp. at 1478 (granting temporary restraining order to prevent violation of § 203 of the Voting Rights Act); Dillard v. Crenshaw Co., 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (granting preliminary injunction to prevent violation of § 2 of the Voting Rights Act); PROPA v. Kusper, 350 F. Supp. 606 (N.D. Ill. 1972) (granting preliminary injunction to prevent violation of § 4(e) of the Voting Rights Act). The Supreme Court in Reynolds v. Sims held that the “any restrictions on that right strike at the heart of representative government.” 377 U.S. 533, 555 (1964). Denial of the right to participate in an election is by its nature an irreparable injury. See id., 377 U.S. at 585 (with a finding of a constitutional violation in the legislative apportionment context, “it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan”).

Moreover, Congress’ specific provision for injunctive relief in the Voting Rights Act supports a finding of irreparable harm. The Voting Rights Act authorizes the Attorney General to seek “preventative relief, including an application for a temporary or permanent injunction”

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whenever any person has engaged or there are reasonable grounds to believe that a person is about to engage in a violation of the Voting Rights Act. 42 U.S.C. § 1973j(d); see also 42 U.S.C. § 1973aa-2. “[C]ourts have found that when Congress decides to make available the remedy of injunction for violations of a statute’s substantive provisions, irreparable injury is presumed to flow from such violations.” United States v. Mass. Water Res. Auth., 256 F.3d 36, 50 n.15 (1st Cir. 2001) (citing United States v. City of Painesville, 644 F.2d 1186, 1194 (6th Cir. 1981)); see also Instant Air Freight Co. v. C.F. Air Freight, 882 F.2d 797, 803 (3d Cir. 1989).

A plaintiff generally proves irreparable harm by demonstrating a potential injury that cannot be redressed by post-trial remedy. See Rio Grande Cmty. Health Ctr., Inc. v. Rullan, 397 F.3d 56, 76 (1st Cir. 2005). The right to participate in the electoral process is invaluable and irreplaceable. Language-minority citizens unable to cast informed votes in the elections this fall cannot be made whole by monetary damages or by ex-post recognition of their harm. In short, without preliminary relief, these citizens “might triumph at trial but be left holding an empty bag.” CMM Cable Rep., Inc. v. Ocean Coast Props., Inc., 48 F.3d 618, 620 (1st Cir. 1995).

The United States has established that Defendants have failed to meet Philadelphia’s obligation under Section 203 to provide voting assistance in Spanish. Defendants have also violated Section 208 by preventing voters who need assistance in voting from receiving that assistance and from selecting an assistor of choice in the polling booth. The effect on the voters themselves is stark. It is neither minor nor speculative. That harm will recur on November 7, 2006, unless an injunction is issued, and it will be irreparable. See Casarez v. Val Verde County, 957 F. Supp. 847, 864-65 (W.D. Tex. 1997) (granting injunction because monetary damages could not redress Voting Rights Act violation). Denial of equal access to the electoral process

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also discourages future participation by voters, as evidenced by the declarations of citizens in the City of Philadelphia. See, e.g., Gomez v. City of Watsonville, 863 F.2d 1407, 1416 n.4 (9th Cir. 1988) (noting how voting discrimination can result in depressed participation in the electoral process). The City's failure to assure equal participation in our democracy cannot be redressed by money damages. The irreparable nature of the harm to Philadelphia's LEP voters warrants preliminary relief.

C. Preliminary Relief Poses Little Hardship to Defendants

The United States asks only that Defendants undertake the reforms necessary to comply with federal law and provide equal access to the voting process for the City's Spanish-speaking voters with limited-English proficiency that can in fact be taken in the limited time available without disruption of the election process. Any added administrative expense to Defendants is likely to be minimal. The employment of Spanish-speaking poll workers would not result in new expense to Defendants beyond the cost of recruitment because these bilingual poll workers could take the place of non-bilingual poll workers. See, e.g., Harris v. Graddick, 593 F. Supp. 128, 136 (M.D. Ala. 1984) ("[T]he solid empirical evidence is that substantial increases in [minority] poll officials may be achieved easily and quickly, if there is a will to do so."). Here, means of recruitment are available even at this hour, including drawing on City and school employees who speak Spanish and who can be freed without disruption for service on election day, and enlisting bilingual students whose education can be enhanced rather than disrupted by service at the polls.

While the upcoming November 7 election is approaching, any "shortage of time will not necessarily shield election officials" from compliance with the Voting Rights Act. Chinese for Affirmative Action v. Leguennec, 580 F.2d 1006, 1008 (9th Cir. 1978). In Chinese for

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Affirmative Action, the Court imposed relief under Section 203 even though “[t]he determination, in early September, that the city was subject to [Section 203] left the city only a few days in which to make the contracts [for printing materials in Chinese and Spanish] and accomplish the changes necessary to modify its election procedures to comply with the Act before the November elections.” See id.; Metropolitan Dade County, 815 F. Supp. at 1477 (S.D. Fla. 1993).

In light of the City’s clear obligations under Section 203, and in light of the importance of full compliance with Section 203 for Spanish-speaking voters, the relief sought by the United States is reasonable and can be accomplished in time for the November 7, 2006 election. Courts have ordered relief similar to that sought here in a similar, or even a shorter, time frame. See, e.g., Berks County, 250 F. Supp. 2d at 527 (two months); Arroyo, 372 F. Supp. at 765 (one month); PROPA, 350 F. Supp. at 611-12 (eight days), aff’d, 490 F.2d 575 (7th Cir. 1973); Metropolitan Dade County, 815 F. Supp. at 1476 (three days, with March 13th ruling to translate and publicize information for a March 16th election).

This situation differs dramatically from that facing the Supreme Court in Purcell v. Gonzalez, 549 U.S. ____ 2006 U.S. Lexis 8000 (2006). There, the Court rejected the summary and unexplained injunction of a complex voter identification with which voters and election officials alike were widely familiar, and for which they had been planning. A sudden change in that procedure necessarily would result in “confusion and consequent incentive to remain away from the polls.” Slip op. at 4. That case also involved the balancing of competing governmental interests, including “the State’s compelling interest in preventing voter fraud [and] ...the strong interest in exercising the fundamental political right to vote”, slip op. at 4, for persons without

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the requisite identification.

There is no prospect for disruption here. The inclusion of Spanish speakers at sites where they are needed can only result in the smoother operation of the polls. The availability of assistance both from bilingual City poll workers and from persons whom voters choose and trust to provide needed assistance can only encourage previously deterred citizens to vote. And there is no balancing here. There is no conflict here between the interest in honest elections and access of voters to the franchise. There is no public interest in depriving citizens of these rights. The City can claim no interest in continuing to violate the law.

D. Entry of a Preliminary Injunction Serves the Public Interest

It thus cannot be disputed that ordering Defendants to conduct elections in compliance with the Voting Rights Act serves the public interest. Defendants' continued administration of an electoral process that is not equally accessible to all citizens of Philadelphia harms not only those who are disenfranchised, but also the electorate as a whole. See, e.g., Metropolitan Dade County, 815 F. Supp. at 1478 (finding injunction under Section 203 was in the public interest); Harris, 593 F. Supp. at 135 (“[W]hen § 2 [of the Voting Rights Act] is violated the public as a whole suffers irreparable injury.”). In the absence of injunctive relief, voters will continue to struggle to exercise the franchise in Philadelphia. In these circumstances, a preliminary injunction clearly serves the public interest and would be appropriately issued.

V. RELIEF SOUGHT

As set forth in the attached Proposed Temporary Restraining Order (as well as the Proposed Preliminary Injunction), the United States respectfully requests that this Court enjoin Defendants from failing to comply with Sections 203 and 208 of the Voting Rights Act, and to

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order Defendants to take such reasonable affirmative steps to address the violations of these provisions that can be accomplished in the time available. We seek an Order requiring the City to make and document its best efforts to appoint additional bilingual poll workers at precincts where they are needed and to take essential steps to ensure compliance with the right of voters under Section 208. These provisions of the proposed order are reasonable and represent “first steps” toward relief ordered in similar minority language cases under the Voting Rights Act.⁷

The Proposed Order also seeks Court authorization for the Director of the Office of Personnel Management to appoint federal observers pursuant to Section 3(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973a(a), for a limited period. Because this has been a point of contention and misunderstanding by the City, we here explain this function in some detail.

The appointment of federal observers through an interlocutory order is expressly permitted by the Voting Rights Act:

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteen amendment, ... the court shall authorize the appointment of Federal observers ... to serve for such period of time ... as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment ... as part of any interlocutory order if the court determines that the appointment of such observers is necessary to enforce such voting guarantees . . .

Where violations have occurred, an order should be withheld only if the violations “have

⁷ See, e.g., Berks County, 250 F. Supp. 2nd at 542-43; PROPA, 350 F. Supp. at 611-12; Arroyo, 372 F. Supp. at 767-68; Torres, 381 F. Supp. at 313; Harris, 593 F. Supp. at 137-39 (ordering relief in light of “gross underrepresentation of black persons among poll officials across the state”). See also, orders regarding the minority language requirements of the Voting Rights Act on our website at <http://www.usdoj.gov/crt/voting/litigation/caselist.htm>.

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been few in number and have been promptly and effectively corrected by State or local action, the continuing effect of such incidents has been eliminated, and there is no reasonable probability of their recurrence in the future.” 42 U.S.C. § 1973a(a). Federal observers have monitored polling places across the United States for over 40 years, and in locations from Boston to San Diego and Miami to Yakima, Washington. Federal observers currently are authorized in 169 jurisdictions throughout the country, including 21 pursuant to active federal court order (17 such orders have expired). See http://www.usdoj.gov/crt/voting/examine/activ_exam.htm#examiners.

Congress recently emphasized the importance of federal observers to ensure compliance with the Voting Rights Act and the guarantees of the Fourteenth and Fifteenth Amendments. As the House Committee on the Judiciary recently found when considering reauthorization and amendments to of the Act, federal observers have “played a critical role preventing and deterring 14th and 15th amendment violations by communicating to the Department of Justice any allegedly discriminatory conduct for further investigation.” H.R. Rep. No. 109-478, at 24 (2006). “While observers are not authorized to take action against the perpetrators of discriminatory conduct, the Committee finds that they have served a critical oversight function, monitoring and reporting on the actions of voters and poll workers inside the polling locations.” Id., at 44. This is especially true in the context of a Section 203 violation because federal observers can document whether assistance is in fact available and whether voters are not being subjected to hostile and demeaning treatment. Id., at 44-45.

Federal observers are not police or law enforcement officers or federal investigators. As Nancy Randa, Deputy Associate Director Human Resources Products and Services for the Office of Personnel Management, testified, “observers serve as neutral monitors, witnesses, who do not

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intervene if there are violations. They only watch, listen, and record events that occur at particular polling sites on election day.” See “Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program: Hearing before the Subcommittee on the Constitution of the Committee on the Judiciary,” 109th Congress, Serial No. 109-77, at 9-10 (2005) (testimony of Nancy Randa) (relevant excerpts attached as Exhibit 56). “They are the eyes and ears of the Justice Department attorneys in the polling places.” See id. at 18-19 (testimony of Barry H. Weinberg). “Federal observers also receive detailed training regarding their roles and responsibilities and, more importantly, conduct role playing in the training to ensure that observers know how to handle themselves.” Id. at 9-10.⁸

Here, there should be no doubt of the immediate need for federal observers in many of Philadelphia’s polling places during the November 7, 2006 general election. As demonstrated above, the City has engaged in widespread violations of Sections 203 and 208 that have deterred and, in some cases, prevented voters from exercising their franchise. Voters who have needed assistance in voting have not received such assistance and have been forced to vote ineffectively. Some have had to rely on family members who do not or cannot understand the voting process. Some have been taken advantage of and, in some cases, have had their votes stolen by

⁸ In rare circumstances, when a voter is being assisted in marking the ballot, a federal observer may enter the booth with a voter’s permission to protect the right of the voter to ensure that the ballot is marked in accordance with the voter’s wishes; indeed, poll workers have been required to affirmatively advise each assisted voter of the presence of the federal observer and ask the voter if he or she desired to have the assistance observed. United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966, affirmed per curiam 386 U.S. 270 (1967)); see also United States v. Executive Comm. of the Democratic Pty., 254 F. Supp. 543, 546 (S.D. Ala. 1966). The United States does not seek such an involved and obtrusive process. While the need for such protection cannot be ruled out under the extreme circumstances of Philadelphia, it should only be offered where clearly appropriate.

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individuals preying on their need for Spanish or other language assistance. Spanish-speaking voters have suffered intimidation and hostility simply because they speak Spanish. The presence of federal observers can help to ensure that such conduct does not occur during the November 7, 2006 election. They can record such conduct and report it to Department attorneys, who can then report it to City officials and place such officials finally in a position to police their own polls. In this way, an observer presence would have a deterrent effect upon misconduct and discrimination in the election process.

The City cannot reasonably assert that its violations “have been few in number and have been promptly and effectively corrected by State or local action, the continuing effect of such incidents has been eliminated, and there is no reasonable probability of their recurrence in the future.” 42 U.S.C. § 1973a(a). The City’s longstanding history of non-compliance with Section 203, as well as the Order of the United States District Court in Arroyo, demonstrate that the violations have been long-standing and persistent, and that City elections require a period of close scrutiny.

Regardless of the number of bilingual interpreters hired by Philadelphia, the City will not satisfy its obligations under Section 203 if these interpreters are not properly trained or permitted to work inside the polling place. The record in this case clearly demonstrates that the City does not exercise sufficient control over its polling places to ensure compliance with the Voting Rights Act.

Finally, in contrast to the many advantages to be gained from federal observation, the inconvenience to the Defendants is slight. City officials need not take any action to authorize, train, supervise, or accommodate federal election observers. As set forth above, federal

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observers simply observe. They do not interfere in any way with the conduct of the election. See 42 U.S.C. §§ 1973, 1973f.

VI. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court enter the accompanying proposed temporary restraining order, or in the alternative, a proposed preliminary injunction, to ensure that Defendants comply with the requirements of Sections 203 and 208 of the Voting Rights Act, and authorizing the appointment of federal observers to monitor Election Day activities in the City of Philadelphia.

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Date: 25th day of October, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2006, I filed the foregoing Memorandum of Points and Authorities in Support of United States Motion for Temporary Restraining Order, or in the Alternative, a Preliminary Injunction, electronically with the Court for the Eastern District of Pennsylvania, where it is available to be viewed in PDF format, and I caused a true and correct copy to be served by personal delivery upon:

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The evidentiary materials in support of this Memorandum were delivered by hand to the Court and counsel.

/s/ M. Eric Eversole

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